

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In re Applications of

MM DOCKET NO. 93-135

THE PETROLEUM V. NASBY  
CORPORATION

File No. BRH-890601VB

For Renewal of License  
of Station WSWR(FM),  
Shelby, Ohio

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THE PETROLEUM V. NASBY  
CORPORATION

File Nos. BTCH-921019HX  
and BTCH-921019HY

For Transfer of Control  
of Station WSWR(FM),  
Shelby, Ohio

To: The Review Board

**MASS MEDIA BUREAU'S OPPOSITION TO  
PETITION FOR RECONSIDERATION AND/OR CLARIFICATION**

1. On July 5, 1995, The Petroleum V. Nasby Corporation ("Nasby") filed a Petition for Reconsideration and/or Clarification of the Review Board's Decision, FCC 95R-11 (released June 5, 1995) ("Decision") in the above captioned proceeding. The Mass Media Bureau opposes the petition.

2. In its Decision, the Review Board affirmed the Initial Decision of Administrative Law Judge Edward Luton, 9 FCC Rcd 6072 (ALJ 1994) ("I.D."), and granted the application for renewal of license of Station WSWR(FM) and the application for transfer of control of Station WSWR(FM). However, the Review Board conditioned the grant of the renewal application on the specific requirement that Thomas L. Root's immediate family completely

divest itself of all Nasby stock, and Joanne Root, Thomas' mother, resign from her corporate positions in Nasby.

3. Reconsideration is appropriate only where the petitioner shows either a material error or omission in the Decision or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.

Reconsideration is not granted for the purpose of debating matters on which the Board has already deliberated and spoken. See WWIZ, Inc., 37 FCC 685, 686 (1964), aff'd sub nom. Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966) (WWIZ); 47 C.F.R. §1.106(c). Applying the foregoing, the Bureau submits that Nasby has failed to demonstrate that reconsideration is warranted.

4. In its Petition for Reconsideration, Nasby asks the Board to reconsider and/or clarify certain aspects of its Decision.

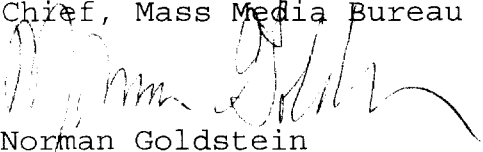
First, Nasby argues that the Review Board's divestiture order places undue hardship on Nasby and the affected parties. Nasby contends that the divestiture is tantamount to a forced "fire" sale of the station under conditions which are not in the station's best interest. In lieu of the Board's condition Nasby offers to establish a new irrevocable trust to hold title to the shares of stock currently held by Kathy G. Root individually, and in trust for her children. It claims that such a trust would accomplish the Board's goal of removing any potential presence of

Thomas L. Root from the corporation. Nasby also asks the Board to clarify whether the Decision allows the transfer of Nasby stock to the law firm of Ginsburg, Feldman & Bress, Chartered, in satisfaction of a stock pledge agreement relating to legal fees incurred by the law firm on behalf of Thomas L. Root. Finally, Nasby objects to the Board's order calling for Joanne L. Root's resignation from her corporate positions, calling it grossly unfair. It asks the Board to reconsider its resignation order.

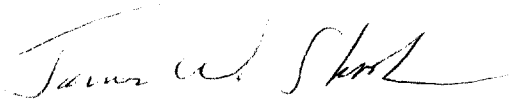
5. Nasby fails to satisfy the criteria required for reconsideration. Simply stated, Nasby fails to point out any material errors or omissions of fact which resulted in the Board's so-called incorrect conclusions. Regardless, the Bureau believes Nasby's renewal application should have been denied, as stated in our Application for Review, a copy of which is attached.

6. Accordingly, for the reasons stated above, the Mass Media Bureau respectfully requests that Nasby's Petition for Reconsideration be denied.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau



Norman Goldstein  
Chief, Complaints and  
Investigations Branch



James W. Shook  
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July 19, 1995

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certifies that she has, on this 19th day of July, 1995, sent by regular United States mail copies of the foregoing **"Mass Media Bureau's Opposition to Petition for Reconsideration and/or Clarification"** to:

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Natalie C. Moses

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In re Applications of

MM DOCKET NO. 93-135

THE PETROLEUM V. NASBY  
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File No. BRH-890601VB

For Renewal of License  
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THE PETROLEUM V. NASBY  
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File Nos. BTCH-921019HX  
and BTCH-921019HY

For Transfer of Control  
of Station WSWR(FM)  
Shelby, Ohio

To: The Commission

MASS MEDIA BUREAU'S  
APPLICATION FOR REVIEW

Preliminary Statement

1. The Mass Media Bureau, pursuant to Section 1.115 of the Commission's Rules, hereby requests Commission review of the Review Board's Decision, The Petroleum V. Nasby Corporation, FCC 95R-11 (1995) (hereinafter "Decision"). The Decision granted the application of The Petroleum V. Nasby Corporation ("Nasby") for renewal of license of Station WSWR(FM) and the applications of Nasby for transfer of control of the station. The Decision conditioned the grants upon the sale of ownership interests in Nasby held by the wife, children and parents of convicted felon, Thomas L. Root, and the resignation of Joanne Root, Thomas L. Root's mother, from her corporate positions in Nasby.<sup>1</sup> The

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<sup>1</sup> The Decision also imposed a \$4,000 forfeiture on Nasby for repeated violations of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules for unauthorized transfers of control. The Bureau does not seek

Bureau submits that the Decision conflicts with Commission policy and that the Decision should have denied the Nasby renewal application. See Section 2.115(b) 5 (iv) of the Commission's Rules

#### Question Presented

Whether the Decision erred in determining that Nasby is qualified to remain a Commission licensee despite the criminal convictions of Nasby's principal, Thomas L. Root.

#### Discussion

2. The material facts are not in dispute. During the license term under review, Thomas L. Root ("Root"), either individually or as custodian for his minor children, generally held some 34.5% of Nasby's outstanding stock.<sup>2</sup> Also, during the license term, Root was Nasby's general counsel and communications counsel, secretary, and one of its three directors. Root resigned from these corporate roles in March and April 1990, subsequent to the end of the license term. During his tenure as an officer and director of Nasby, Root attended, participated in and voted at corporate and shareholder meetings. He also assisted Nasby with the filing of ownership information and

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review of this aspect of the Decision.

<sup>2</sup> For a brief period (May 30-31, 1989), Root held individually or as custodian 54.5% of Nasby's stock. Over the course of the next four weeks, he transferred 10% of his shares to the corporation as treasury shares and transferred all of his remaining holdings of stock to his wife, minor children and parents. Decision, at para. 23.

applications. Decision, at paras. 4, 7 and 8.

3. On October 26, 1990, Root pleaded no contest to North Carolina felony charges involving inter alia, fraud in the sale of unregistered securities. On January 17, 1992, he was found guilty, after entering a guilty plea, of federal felony charges including the forging of public records and wire fraud. On June 23, 1992, he pleaded no contest to Florida felony charges, which included securities fraud. The federal convictions stemmed from misconduct which occurred during the course of Commission licensing proceedings, none of which involved Nasby. Decision, at paras. 5 and 6. The state convictions stemmed from Root's activities on behalf of Sunrise Management Services, Inc. See Abuses of Commission Processes by Broadcast Applicants, 4 FCC Rcd 6342 (1989). As the Decision correctly found at para. 17, Root's misconduct was willful, frequent, current and serious. Moreover, it was directly related to the Commission's licensing activities.

4. When the Nasby renewal application was filed, Root was the company's single largest shareholder, as well as an officer, director, and counsel. Throughout this proceeding, Root's immediate family, most of whose interests can be traced directly to stock transfers made by Root, have continued to own interests in Nasby. In addition, one of Nasby's directors and officers is Root's mother, who came to her roles upon the resignation of her son from those posts. Thus, for all intents, Root was and still



is an inherent part of Nasby, and Nasby seeks renewal with Root as a significant part of its identity.

5. In its Policy Regarding Character Qualifications in B/cast Licensing, 102 FCC 2d 1179 (1986), recon. granted in part, denied in part, 1 FCC Rcd 401 (1986) appeal dismissed sub nom. National Ass'n for Better B/casting v. FCC, No. 86-1179 (DC Cir. June 11, 1987) ("Character Policy Statement"), the Commission made clear that FCC-related criminal activity by an applicant for renewal is an important factor to be considered in determining whether the applicant's character entitles it to be entrusted with a license. In carrying out this policy equitably with regard to both corporate and non-corporate applicants, the Commission expressed its intention that only "the minimum necessary regard [be] given to the legal form in which they do business." Character Policy Statement, 102 FCC 2d at 1217. Thus, the Commission determined that "wrongdoing by corporate managers who are also controlling stockholders will be treated as though the individuals involved were sole proprietors or partners." 102 FCC 2d at 1218. "The Commission is [also] concerned with persons whose ownership interests are cognizable under the multiple ownership rules or who are in a position to potentially influence or control the operation of the station." Decision, at para. 16, citing Character Policy Statement, 102 FCC 2d at 1205-06.

6. Plainly, as the Decision recognized at para. 17, if Nasby was an individual applicant owned and controlled exclusively by Root, Root's criminal activities would require the denial of the application. In this regard, the nature of Root's convictions compels the conclusion that an applicant significantly influenced by Root can not be trusted or relied upon to follow the Commission's rules. Similarly, if Root is, either directly or through his family, "in a position to potentially influence or control the operation of the station" (Decision, at para. 16, citing Character Policy Statement, 102 FCC 2d at 1205-06), the Commission must deny Nasby's renewal application. The Commission can not find trustworthy or reliable an applicant that has Root, or family members who hold their stock through his maneuvering, as officers, directors and stockholders. Thus, lack of knowledge or involvement on the part of Nasby's other principals does not shield Nasby from the proper inferences to be drawn here, namely, that Root's criminal convictions cast grave doubt on Nasby's propensity both to tell the truth and to comply with the Commission's rules.

7. In an attempt to reach an equitable resolution, the Decision essentially ignores the applicable law. In West Jersey Broadcasting Co., 90 FCC 2d 363 (Rev. Bd. 1982) ("West Jersey"), the Review Board recognized that the Commission does not "atomize[] a licensee into its molecular elements for a gratuitous adjudication on the discrete qualifications of ...

individual shareholder[s]." West Jersey, 90 FCC 2d at 371. See also, Marr Broadcasting Company, Inc., 2 FCC Rcd 6596, 6597-98 (Rev. Bd. 1987); California Broadcasting Corp., 2 FCC Rcd 4175 (Rev. Bd. 1987). Then, contrary to the rationale of West Jersey, the Decision, in para. 23, proceeds to atomize Nasby, by observing that the other principals of Nasby had no knowledge or involvement with Root's criminal activities and that Root was not in control of the daily operation and management of the station. The Decision thus attempts to differentiate between guilty and innocent principals, and then proposes to restructure Nasby by removing the guilty. The Commission would not ordinarily allow such restructuring by a licensee and should not allow the Review Board to do so here.<sup>3</sup> To approve the Review Board's approach in this case would undermine the Commission's authority. Moreover, Nasby never sought such a restructuring. It has advocated from the outset that it is currently qualified for renewal of license, notwithstanding Root's family's continued involvement. Inasmuch as Nasby still includes and previously included Root in influential roles, the Commission must conclude that Nasby can not be relied upon or trusted. West Jersey can not be distinguished on the grounds that the misbehavior in that case was undertaken on behalf of the licensee, because the core decision was that the wrongdoing raised fatal doubts as to the corporation's reliability and trustworthiness. The nature and

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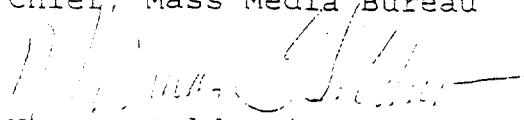
<sup>3</sup> Indeed, by not allowing restructuring, the Commission recognized that innocent shareholders can lose their investments. See Character Policy Statement, 102 FCC 2d at 1218 n. 93.

gravity of Root's wrongdoing and his role in Nasby also raise fatal doubts as to Nasby's reliability and trustworthiness.


8. Finally, the Decision is internally inconsistent. At para. 21, the Decision concludes that Root's criminal behavior does not fatally infect Nasby because other principals were unaware of Root's wrongdoing and Root did not exercise day-to-day control of the station. Nevertheless, at para. 24, the Decision conditions grant of Nasby's renewal application on the Root family's sale of Nasby stock to unrelated third parties and the resignation of Root's mother from her corporate posts. The Decision posits that "only a complete divestiture to unrelated third parties of the Root family holdings involved in the unauthorized transfers of control can provide the Commission with adequate assurance that the Commission will not again be subjected to public scrutiny to determine the potential impact of Mr. Root's presence." Decision, at para. 24. The Decision can not have it both ways. Either Root's actions did not fatally infect Nasby, or they did. Either Nasby is entitled to unconditional approval of its application, or its application must be denied. The Bureau submits that Root, through his criminal acts, has cast grave doubt on Nasby's propensity towards truthfulness and reliability. The appropriate response is to recognize that Root's actions and involvement have forfeited Nasby's right to continue as a licensee. Nasby's application must therefore be denied.

9. For the reasons set forth in the foregoing, the Bureau urges the Commission to grant review of the Review Board's Decision in the above-captioned proceeding and deny Nasby's renewal application for Station WSWR(FM).

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau



Norman Goldstein  
Chief, Complaints and  
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July 5, 1995

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certifies that she has, on this 5th day of July, 1995, sent by regular United States mail copies of the foregoing "Mass Media Bureau's Application for Review" to:

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